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**JAN 26 2005**

January 26, 2005

Mr. Michael M. McGaw  
USPTO  
Fax: 703-872-9306

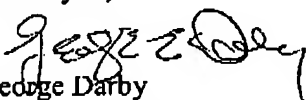
Dear Mr. McGaw,  
I will be filing a power of attorney in Serial Number: 10/730,776, by Lieberman, assigned to Hawaii Biotech, Inc., in the Response to First Office Action. I will ask a general question, since the POA is not of record yet.

To what degree would an affidavit under 35 USC 103(c) and 37 CFR 1.78(c) of common assignment of references obviate use of those references in a rejection based on obviousness?

My understanding is that an affidavit under 35 USC 103(c) and 37 CFR 1.78(c) would remove the references (in this specific case, Ivy, McDonell, and Peters) as prior art in a 35 USC 103(a) rejection. Although the First Office Action in the 10/730,776 case recites that principle in the 35 USC 102 section, it is not restated in the 35 USC 103 section.

Please email to [iplaw@tech-patent.com](mailto:iplaw@tech-patent.com) if that is more convenient than phone or fax.

Thank you,

  
George Darby  
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